

## **REMARKS**

### **Status of the Claims**

Claims 1, 3-10, 12-16, and 27-34 were pending in the present application. Applicants have amended claims 1, 12, and 27. Applicants submit that these amendments add no new matter. After entry of this amendment, claims 1, 3-10, 12-16, and 27-34 will be pending in this application.

### **Support for Claim Amendments**

Claims 1, 12, and 27 have each been amended to recite that a well strip comprises a plurality of integrally connected wells, each of said wells for containing a fluid sample therein. Support for this amendment is found throughout the specification, at least, for example, in FIGS. 1, 2, 4, and 7, at page 1, paragraph 2, lines 1-5, at page 4, paragraph 26, lines 1-3, and at page 5, paragraph 30.

### **Rejections under 35 U.S.C. 102(b)**

Claims 1-2, 3-10, 12-16, and 27-34 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere"). Applicants traverse the rejection to the extent it is maintained over the claims as amended.

Claim 2 was canceled in the Amendment and Response to Restriction Requirement filed on July 1, 2004. Therefore, Applicants respectfully request that the Examiner withdraw the rejection with respect to claim 2 as it is not pending in the instant application.

It is well settled law that an anticipating reference must teach each and every element of a claimed invention. (Glaxo, Inc. v. Novopharm Ltd., 52 F.3d 1043, 1047 (Fed. Cir. 1995)). Applicants submit that Franchere does not teach each and every element of the claimed invention. Therefore, for the reasons outlined below, Franchere is an improper reference under 35 U.S.C. 102(b).

As amended, independent claims 1, 12 and 27 each recite a well strip comprising a plurality of integrally connected wells, each of said plurality of wells for containing a fluid sample therein.

In contrast to Applicants' claimed invention, which requires that the wells are for containing a fluid therein, Applicants submit that Franchere teaches modular units with openings that serve as guides for supporting a plurality of tubes. The tubes, according to Franchere, may hold fluid samples. (See *e.g.* Col. 1, lines 7-15; Col. 1, lines 26-30; Col. 1, lines 47-52; Col. 3, lines 27-30; Col. 4, lines 21-28).

Franchere's modular units, absent a tube, cannot contain a fluid sample as required by Applicants claimed invention. Franchere teaches that "each of the side wall panels [of the units modular units] have openings" to reduce the quantity of material required for making the modular units, to reduce the weight of the unit, and to allow for "observation of a specimen in the container supported in the modular unit." (Col. 3, lines 1-6). Applicants submit that a modular unit with holes in the side walls could not contain a fluid sample for analysis as required by Applicants' claimed invention because the sample would spill through the openings in the side wall.

In contrast to Applicant's claimed invention, Franchere does not teach or suggest a plurality of integrally connected wells in a well strip. Rather, Franchere's assembled modular unit lacks wells until Franchere's tubes are inserted through the guide openings in the modular unit. Franchere does not teach or suggest tubes integral to the modular unit for holding fluid samples. For example, neither FIG. 1 of Franchere, which shows a modular unit before it is assembled, nor FIG. 2, which shows a modular unit after it is assembled, show an integrally connected test tube or container. Not one of the modular units depicted by Franchere nor the corresponding text disclose an integrally connected test tube for holding a fluid sample. Franchere's modular units only have openings in the top surface which support tubes placed therein after assembly of the modular unit (col. 3, lines 27-30; col. 4, lines 21-28). Accordingly, Applicants submit that Franchere does not teach a well strip comprising a plurality of integrally connected wells each well for containing a fluid sample.

For these reasons, Applicants submit that Franchere does not teach or suggest a well strip comprising a plurality of integrally connected wells for containing a fluid sample therein as required by independent claims 1, 12, and 27. Consequently, Applicants submit that Franchere is an improper reference under 35 U.S.C. 102(b). Applicants therefore respectfully request

reconsideration and withdrawal of the rejection of independent claim 1 and claims 3-10 and 28-31 depending from claim 1, independent claim 12 and claims 13-16 and 32-34 depending from claim 12, and independent claim 27.

### **CONCLUSION**


Applicants submit this application is in condition for allowance and request favorable action. The Examiner is invited to telephone the undersigned representative at the number indicated below to discuss any outstanding issues.

Respectfully submitted,

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